

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

JOSE E. GARCIA, *et al.*,

Plaintiffs,

vs.

CALIFORNIA SUPREME COURT,
et al.,

Defendants.

CV 12–4504–DWM

ORDER

Plaintiffs’ Notice of Dismissal of Judicial Council Defendants, (Doc. 30), is now before the Court. Plaintiffs seek to dismiss without prejudice claims against Defendants Ninth Circuit Judicial Council, the Honorable Chief Judge Alex Kozinski, the Honorable Sidney R. Thomas, the Honorable Raymond C. Fisher, the Honorable Ronald M. Gould, the Honorable Johnnie B. Rawlinson, the Honorable Proctor R. Hug, Jr., the Honorable Roger L. Hunt, the Honorable Robert H. Whaley, and the Honorable Stephen M. McNamee (“Judicial Council Defendants”). (*See id.*)

The claims against the Judicial Council Defendants are dismissed without prejudice. Plaintiffs do not refer to any authority to support their voluntary

dismissal of claims against the Judicial Council Defendants without an Order of this Court. The categorization of the paper now before the Court as a Notice is at odds with the docket text entered by Plaintiffs on filing, which labels the paper as a Motion. Presumably because of confusion over whether their response was required, the Judicial Council Defendants filed a statement of non-opposition. (See Doc. 31.) The Judicial Council Defendants interpret the filing as a notice of voluntary dismissal brought pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). (*Id.*) The Judicial Council's interpretation is reasonable; it is supported by the Rule and the presumption that the content of a paper takes precedence over the docket text entered by a party on its submission to the Electronic Case Filing system. Rule 41 allows an action to be dismissed pursuant to a plaintiff's request, without a court order, where notice of dismissal is filed before the opposing party serves either an answer or a motion for summary judgment. The Judicial Council has not filed an answer or a motion for summary judgment in this matter. While the Judicial Council Defendants have filed a Motion to Dismiss in a related matter, (*see Blye v. California Supreme Court*, No. CV 11-5046-DWM at Doc. 74), Plaintiffs may still voluntarily terminate their claims by filing a notice of dismissal under Rule 41(a)(1). *See Miller v. Reddin*, 422 F.2d 1264, 1265 (9th Cir. 1970). The Plaintiffs' dismissal of claims against

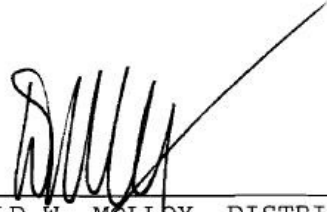
these Defendants on notice alone is therefore appropriate.

IT IS ORDERED that claims against the Judicial Council Defendants are DISMISSED WITHOUT PREJUDICE.

IT IS ORDERED that the Clerk of Court shall update the docket text accompanying the Plaintiffs' Notice of Voluntary Dismissal of Claims against the Judicial Council Defendants, (Doc. 30), to reflect its status as a "Notice" and not a "Motion" requiring Court action.

IT IS FURTHER ORDERED that the caption of this matter is amended to reflect the dismissal of the Judicial Council Defendants.

DATED this 21st day of January, 2014.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT
